

SECOND REGULAR SESSION

SENATE BILL NO. 892

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time January 18, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4317S.011

AN ACT

To repeal sections 408.140 and 408.555, RSMo, and to enact in lieu thereof two new sections relating to mortgage loans.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 408.140 and 408.555, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 408.140 and 408.555, to
3 read as follows:

408.140. 1. No further or other charge or amount whatsoever shall be
2 directly or indirectly charged, contracted for or received for interest, service
3 charges or other fees as an incident to any such extension of credit except as
4 provided and regulated by sections 367.100 to 367.200, RSMo, and except:

5 (1) On loans for thirty days or longer which are other than "open-end
6 credit" as such term is defined in the federal Consumer Credit Protection Act and
7 regulations thereunder, a fee, not to exceed five percent of the principal amount
8 loaned not to exceed seventy-five dollars may be charged by the lender; however,
9 no such fee shall be permitted on any extension, refinance, restructure or renewal
10 of any such loan, unless any investigation is made on the application to extend,
11 refinance, restructure or renew the loan;

12 (2) The lawful fees actually and necessarily paid out by the lender to any
13 public officer for filing, recording, or releasing in any public office any instrument
14 securing the loan, which fees may be collected when the loan is made or at any
15 time thereafter; however, premiums for insurance in lieu of perfecting a security
16 interest required by the lender may be charged if the premium does not exceed
17 the fees which would otherwise be payable;

18 (3) If the contract so provides, a charge for late payment on each

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 installment or minimum payment in default for a period of not less than fifteen
20 days in an amount not to exceed five percent of each installment due or the
21 minimum payment due or fifteen dollars, whichever is greater, not to exceed fifty
22 dollars. If the contract so provides, a charge for late payment on each twenty-five
23 dollars or less installment in default for a period of not less than fifteen days
24 shall not exceed five dollars;

25 (4) If the contract so provides, a charge for late payment for a single
26 payment note in default for a period of not less than fifteen days in an amount
27 not to exceed five percent of the payment due; provided that, the late charge for
28 a single payment note shall not exceed fifty dollars;

29 (5) Charges or premiums for insurance written in connection with any
30 loan against loss of or damage to property or against liability arising out of
31 ownership or use of property as provided in section 367.170, RSMo; however,
32 notwithstanding any other provision of law, with the consent of the borrower,
33 such insurance may cover property all or part of which is pledged as security for
34 the loan, and charges or premiums for insurance providing life, health, accident,
35 or involuntary unemployment coverage;

36 (6) Reasonable towing costs and expenses of retaking, holding, preparing
37 for sale, and selling any personal property in accordance with section 400.9,
38 RSMo;

39 (7) Charges assessed by any institution for processing a refused
40 instrument **or the reversal of an electronic funds transfer loan payment**
41 plus a handling fee of not more than twenty-five dollars;

42 (8) If the contract or promissory note, signed by the borrower, provides for
43 attorney fees, and if it is necessary to bring suit, such attorney fees may not
44 exceed fifteen percent of the amount due and payable under such contract or
45 promissory note, together with any court costs assessed. The attorney fees shall
46 only be applicable where the contract or promissory note is referred for collection
47 to an attorney, and is not handled by a salaried employee of the holder of the
48 contract;

49 (9) Provided the debtor agrees in writing, the lender may collect a fee in
50 advance for allowing the debtor to defer up to three monthly loan payments, so
51 long as the fee is no more than the lesser of fifty dollars or ten percent of the loan
52 payments deferred, no extensions are made until the first loan payment is
53 collected and no more than one deferral in a twelve-month period is agreed to and
54 collected on any one loan; this subdivision applies to nonprecomputed loans only

55 and does not affect any other subdivision;

56 (10) If the open-end credit contract is tied to a transaction account in a
57 depository institution, such account is in the institution's assets and such
58 contract provides for loans of thirty-one days or longer which are "open-end
59 credit", as such term is defined in the federal Consumer Credit Protection Act and
60 regulations thereunder, the creditor may charge a credit advance fee of the lesser
61 of twenty-five dollars or five percent of the credit advanced from time to time
62 from the line of credit; such credit advance fee may be added to the open-end
63 credit outstanding along with any interest, and shall not be considered the
64 unlawful compounding of interest as that term is defined in section 408.120.

65 2. Other provisions of law to the contrary notwithstanding, an open-end
66 credit contract under which a credit card is issued by a company, financial
67 institution, savings and loan or other credit issuing company whose credit card
68 operations are located in Missouri may charge an annual fee, provided that no
69 finance charge shall be assessed on new purchases other than cash advances if
70 such purchases are paid for within twenty-five days of the date of the periodic
71 statement therefor.

72 3. Notwithstanding any other provision of law to the contrary, in addition
73 to charges allowed pursuant to section 408.100, an open-end credit contract
74 provided by a company, financial institution, savings and loan or other credit
75 issuing company which is regulated pursuant to this chapter may charge an
76 annual fee not to exceed fifty dollars.

408.555. 1. Except as provided in subsection 2 of this section, after a
2 default consisting only of the borrower's failure to make a required payment, a
3 lender, because of that default, may neither accelerate maturity of the unpaid
4 balance nor take possession of or otherwise enforce a security interest until
5 twenty days after a notice of the borrower's right to cure is given both to the
6 borrower and to all cosigners on the credit transaction nor, with respect to an
7 insurance premium loan, give notice of cancellation until thirteen days after a
8 notice of the borrower's right to cure is given; notice shall not be given prior to
9 default. Until expiration of the minimum applicable period after the notice is
10 given, the borrower or cosigner may cure all defaults consisting of a failure to
11 make the required payment by tendering the amount of all unpaid sums due at
12 the time of the tender, without acceleration, plus any unpaid delinquency or
13 deferral charges. Cure restores the borrower to his rights as though the default
14 had not occurred.

15 2. This section does not prohibit a borrower from voluntarily surrendering
16 possession of property which is collateral and the lender from thereafter
17 accelerating maturity of the loan and enforcing the note or loan and his security
18 interest in the property at any time after default. If the lender has not already
19 given the notice described in subsection 2 or 3 of section 408.554, he shall upon
20 voluntary surrender of the collateral notify the borrower either personally or by
21 mail at the borrower's last known address that he may owe additional money
22 after the money received from the sale of the collateral is deducted from the total
23 amount owed.

24 3. No lender is bound by the provisions of subsection 1 of this section if
25 default by the same borrower in connection with the same credit transaction with
26 the same lender has occurred twice notwithstanding the cure of such defaults **or**
27 **three times in the case of a second mortgage loan** except as provided in
28 subsection 4 of this section.

29 4. Default by a borrower on a second mortgage loan may be cured by
30 tendering the current obligation of the borrower at any time prior to the
31 completion of the judicial or extrajudicial proceedings for foreclosure upon such
32 real estate. For the purposes of this section, "current obligation of the debtor"
33 means the aggregate of all installments scheduled to be due at the time of the
34 tender, **late charges otherwise permitted by law, and expenses of**
35 **foreclosures actually incurred by the lender for initiating a bona fide**
36 **foreclosure**, notwithstanding any contractual provision for the acceleration of
37 installment payments. A lender may take no steps to enforce a security interest
38 in real property pursuant to a second mortgage loan until thirty days after notice
39 of the borrower's right to cure is given; notice shall not be given prior to
40 default. Cure restores the borrower's rights under the agreement as though the
41 default had not occurred, [and any foreclosure in violation of this section is a
42 class B misdemeanor] **except that only three defaults are permitted**. This
43 section shall not affect the debtor's right otherwise to redeem such real property
44 under any other provision of law.

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